

**BEST AVAILABLE COPY**REMARKS/ARGUMENTS

The claims are 1, 2, 7, 9-26 and 28-31. Claim 1 has been amended to incorporate the feature previously recited in claim 27 that the first film layer located further away from the bituminous layer has a larger coefficient of elongation than the second film layer. Accordingly, claim 27 has been canceled, and claim 9 has been amended to refer to the bituminous layer recited in claim 1. Reconsideration is expressly requested.

Claims 1, 2, 7 and 9-31 were rejected under 35 U.S.C. §112, first paragraph as containing new matter in the recitation in claim 1 that "said film layers are produced from a polyolefin, polypropylene, polyamide, polyethylene terephthalate (PET), or polyacrylonitrile".

This rejection is respectfully traversed, as this recitation was substantially set forth in claims 3-6 and 8 of the originally filed claims. Thus, claim 3 as originally filed, recited that at least one of the two film layers was produced from a polyolefin, claim 4 recited that at least one of the two film layers was produced from polypropylene, claim 5 recited that at least one of

the two film layers was produced from polyamide, claim 6 recited that at least one of the two film layers was produced from polyethelene terephthalate (PET), and claim 8 recited that at least one of the two film layers was produced from polyacrylonitrile. In addition, these materials were specifically set forth at page 2, fourth paragraph to page 3, first full paragraph of the disclosure as originally filed. Accordingly, it is respectfully submitted that the recitation which the Examiner has objected to is fully supported by the application as originally filed, and Applicant respectfully requests that the rejection on this basis be withdrawn.

Claims 1, 2, 9-11, 22, 23 and 27-30 were rejected under 35 U.S.C. §102(b) as being anticipated by *Stierli U.S. Patent No. 4,442,148*. Claims 1, 2, 7, 9-11 and 22-27 were rejected under 35 U.S.C. 102(b) as being anticipated by *Jenkins et al. U.S. Patent No. 5,824,401*. Claims 1, 2, 7, 9-11, 15, 16, 18 and 20-30 were rejected under 35 U.S.C. 102(b) as being anticipated by *Wiercinski et al. U.S. Patent No. 5,687,517*. Claim 12 was rejected under 35 U.S.C. 103(a) as being unpatentable over either *Stierli* or *Jenkins et al.* or *Wiercinski et al.* in view of *Gürtler U.S. Patent No. 3,686,060*. Claims 13 and 14 were rejected under 35 U.S.C. 103(a)

as being unpatentable over *Stierli* or *Jenkins et al.* or *Wiercinski et al.* in view of *Zickell et al.* U.S. Patent No. 4,992,315. Claims 17 and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Wiercinski et al.* in view of *Zickell et al.* Claim 31 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Stierli* or *Wiercinski et al.* in view of *Kalkanoglu* U.S. Patent No. 4,757,652.

Essentially, the Examiner's position was that any of *Stierli*, *Jenkins et al.*, or *Wiercinski et al.* discloses the film-bitumen combination recited in the claims including a first film layer being located further away from the bituminous layer having a larger coefficient of elongation than the second film layer. With respect to claim 12, the Examiner's position was that either *Stierli* or *Jenkins et al.* discloses the film bitumen combination recited in the claim, except for at least one edge of part of the at least two film layers projecting beyond the bituminous layer, which was said to be shown by *Gürtler*. With respect to claims 13 and 14, the Examiner's position was that *Stierli*, *Jenkins* and *Wiercinski* each disclose the film-bitumen combination recited in the claims except for showing at least one edge part of the at least two film layers being shorter than the bituminous layer,

which is said to be shown by *Zickell et al.*

In response, Applicant has amended claim 1 to incorporate the feature previously appearing in claim 27 to better define the invention and respectfully traverses the Examiner's rejection for the following reasons.

As set forth in claim 1 as amended, Applicant's invention provides a film-bitumen combination including at least three layers. The combination includes a bituminous layer and at least two film layers made from different materials. The at least two film layers include a first film layer and a second film layer produced from a polyolefin, polypropylene, polyamide, polyethylene terephthalate (PET) or polyacrylonitrile. The first film layer is located further away from the bituminous layer and has a larger coefficient of elongation than the second film layer.

In practice, often the problem occurs that especially in warm weather, the bituminous layer becomes soft. In addition, the tackiness of the bituminous substance decreases. As a result and because the plastic layer contacting the bituminous layer swells, the plastic sheeting will delaminate from the bituminous layer.

To avoid this problem, Applicant's invention provides a film-bitumen combination that includes two plastic film layers in which the outermost layer has a higher thermal coefficient of elongation than the inner layer, which prevents the plastic layers from delaminating from the bituminous layer, as the edges of the plastic layer are pressed to the bituminous layer.

*Stierli* describes a single plastic film layer 3 which is used to protect a bituminous sheet 1. Between the plastic film layer and bituminous sheet, a barrier layer 2 is arranged. The barrier layer is formed by depositing a coating either on the bituminous material or on the plastic sheet (support layer) (see col. 4, lines 16-19 of *Stierli*). Contrary to the Examiner's position, it is respectfully submitted that this barrier layer of *Stierli* is not a film layer as recited in Applicant's claim but rather a coating. Moreover, even if the barrier coating of *Stierli* were considered a "film" layer as suggested by the Examiner, there is no disclosure or suggestion in *Stierli* that this coating has a smaller coefficient of elongation than the plastic sheet 3. Simply because the plastic film layer 3 and the barrier coating 2 may be made of different materials does not mean that plastic film layer 3 will have a larger coefficient of elongation than barrier coating 2.

*Jenkins et al.* describes a double plastic layer construction 16, 18, which is protected against oily substances of a bituminous layer 12 by a barrier layer 20. The two plastic layers 16 and 18 are not made of different material, although one layer contains light-absorbing carbon black and the other layer contains a light-reflecting pigment. Although the Examiner has taken the position that the barrier layer 20 constitutes one of the two film layers recited in Applicant's claim, there is no disclosure or suggestion that this barrier layer has a smaller coefficient of elongation than either of the polymeric layer 16 or 18 as suggested by the Examiner. As with *Stierli*, simply because barrier layer 20 may be made from a different material than polymeric layers 16 and 18 does not mean that these polymeric layers will have a larger coefficient of elongation than the barrier layer.

*Wiercinski et al.* describes a combination of a multilayer film construction which is made of two symmetric film combinations of three film layers 22, 22A. There is no disclosure or suggestion of the specific film-bitumen combination recited in Applicant's claim 1, as amended, in which a first film layer is located further away from the bituminous layer and has a larger coefficient of elongation than the second film layer. Although the Examiner

states that the *Wiercinski et al.* teaches two plastic film layers made from different material, there is no disclosure or suggestion that layer 22 has a larger coefficient of elongation than layer 22 as suggested by the Examiner.

The defects and deficiencies of the primary references to *Stierli*, *Jenkins et al.* or *Wiercinski et al.* are nowhere remedied by any of the secondary references to *Gürtler*, *Zikell et al.*, or *Kalkanoglu*. Although *Zikell et al.* shows in FIG. 3 a covering film 28 that does not cover the bituminous layer 14 completely, there is no disclosure or suggestion of having a first film layer located further away from the bituminous layer that has a larger coefficient of elongation than the second film layer as recited in Applicant's claims.

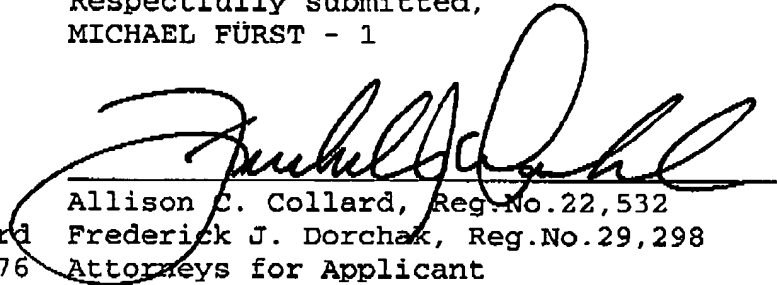
*Gürtler* discloses a multilayer wrapping sheet including a plastic film, a bitumen layer, and a kraft paper layer, the layers being non-coextensive on one edge. However, there is no disclosure or suggestion of Applicant's film-bitumen combination in which a first film layer located further away from the bituminous layer has a larger coefficient of elongation than the second film layer.

Kalkanoglu discloses a roofing product that has a release film on the back surface thereof, which is split to allow the material to be flopped back with one side being stuck and the other side flopped down. However, there is no disclosure or suggestion of Applicant's film-bitumen combination in which a first film layer which is located further away from the bituminous layer has a larger coefficient of elongation than the second film layer.

Accordingly, it is respectfully submitted that the claims are patentable over the cited references.

In summary, claims 1 and 9 have been amended, and claim 27 has been canceled. In view of the foregoing, withdrawal of the final action and allowance of this application are respectfully requested.

Respectfully submitted,  
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